IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.2699 OF 1993

1) Sarva Shramik Sangh, Sangli
559, Mali Gally, Sangli 416 416.

2) Pandurang Bhimrao Bhosale

3) Subhash Vishvas Patil
C/o. Sarva Shramik Sangh
Sangli. .. Petitioners

Versus

1) The State of Maharashtra

2) The Executive Engineer, Sangli
(Through the Additional Government
Pleader, High Court (A.S.)
PWD Dldg., High Court, Bombay).

3) Smt.A.V.Palsule, Presiding Officer
Labour Court, Sangli. .. Respondents

Mr.S.M.Dharap with Ms.Seema Sarnaik for the Petitioners.

Mr.Vijay Patil for Respondent No.2.

Respondent No.3 formal party.

CORAM: SMT.NISHITA MHATRE, J.

JUDGMENT RESERVED ON : 27TH JULY 2004

JUDGMENT DELIVERED ON : 14TH SEPTEMBER 2004

JUDGMENT :

. By this Petition, the Union Sarva Shramik Sangh and two workmen who are members of this Union, have sought to challenge the Award dated 21st May 1992 passed by the Labour Court, Sangli rejecting the Reference for

reinstatement with continuity of service and full back wages and granting only retrenchment compensation to the workmen. The Petition has been filed on behalf of 163 workmen whose services had been terminated by Respondent Nos.1 and 2. All the 163 workmen had raised individual disputes and References had been made under Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") for adjudication before the same Labour Court. By a common Award, the Labour Court has held that all the workmen are entitled to retrenchment compensation.

2. The 163 workmen concerned were all working with the State Government on different posts. They were employed to man 25 Lift Irrigation Schemes at Sangli. The State of Maharashtra i.e. Respondent No.1 established a registered Company under the Companies Act known as the Irrigation Development Corporation of Maharashtra Limited (hereinafter referred to as "the Corporation"). This Corporation was incorporated on 29th December 1973. The Corporation introduced these Schemes for which the 163 workmen were employed. The Schemes were then transferred in June 1985 to the Shetkari Sahakari Sakhar Karkhana Limited, Sangli (hereinafter referred to as "the Karkhana"). The Corporation was wound up on 30th September 1986 and it was decided to either absorb the workmen working on

these Lift Irrigation Schemes or to terminate their services. Notices of termination were issued to the individual workman on 16th May 1985 by the second Respondent. Immediately thereafter, Writ Petition No.2376 of 1985 was filed by the Union, Petitioner No.1 herein, in this Court. The relief sought by the Union in that Petition was that the Schemes for Irrigation should not be transferred to the Karkhana and that the services of the workmen who were working with the Corporation should be protected. An affidavit was filed by one R.K.Mohite, Executive Engineer, Sangli Irrigation Division, Sangli in this Court in reply to the Writ Petition stating that the workmen concerned had been appointed by the Irrigation Department and that the Irrigation Department was running the Scheme for and on behalf of the Corporation. All appointments of these workmen were made by the Irrigation Department and they were never workmen of the Corporation. In view of the affidavit filed, the Writ Petition was rejected. Special Leave Petition preferred against the order passed in the Writ Petition met with the same fate as the Supreme Court recorded the fact that the workmen could have no grievance since they were workmen of the Irrigation Department. While disposing of the Special Leave Petition by its order dated 11th November 1986, the Apex Court observed that if the workmen concerned desire to seek any relief against the State of

Maharashtra, they were at liberty to do so through an appropriate legal remedy. Thereafter, individual disputes were raised by the 163 workmen and they were referred for adjudication before the Labour Court at Sangli. After pleadings were filed, evidence was recorded before the Labour Court of some workmen and the Officer of the State Government.

3. The Labour Court did not accept the contention raised by the Respondents that the Reference was barred by the principles of res judicata. The Labour Court came to the conclusion that the Irrigation Department was an industry and, therefore, the Reference was maintainable. The Labour Court also found that the termination of services effected from 30th June 1985 was illegal and improper as it was not in accordance with Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). However, as regards the breach of Section 25N, the Labour Court was of the view that since the premises in which the workmen were employed was not a factory and, therefore, not an industrial establishment defined under the Act, Section 25N was not attracted. The Labour Labour, however, granted retrenchment compensation and directed the Respondents to give a preference to all the workmen in the matter of employment, as and when work was available. The present Petition impugns this Award.

4. Mr.Dharap, learned Advocate for the Petitioners, submits that the Labour Court's conclusion that the employer was not an industrial establishment and, therefore, the provisions of Section 25N were not attracted should not be accepted. He submits that there can be no doubt that the establishment was a factory as defined under the Factories Act and, therefore, was an industrial establishment as defined in Chapter VB of the Act. He then submits that once the Labour Court had concluded that there was a breach of Section 25F of the Act, the Labour Court ought to have granted reinstatement with continuity of service and full back wages. He submits that the findings of the Labour Court that in view of the fact that the ownership of management of the undertaking had been transferred to the Karkhana, the Respondents could not be saddled with reinstatement or payment of back wages. The learned Advocate then submits that this finding of the Labour Court was uncalled for in view of the affidavit filed on behalf of the Respondents before this Court in Writ Petition No.2376 of 1985 where it was admitted by the affiant that the workmen were employed by the Irrigation Department of the State Government. Therefore, according to the learned Advocate, the question of there being any transfer of the undertaking to the Karkhana and hence the workmen not being entitled to

reinstatement does not arise.

5. Mr.Patil, on the other hand, submits that out of the 163 workmen on whose behalf the Writ Petition has been filed, 14 have expired. He submits that the Writ Petition filed by these workmen is not maintainable. The learned Advocate then submits that the findings of the Labour Court regarding payment of retrenchment compensation cannot be faulted as the Labour Court was of the view that this compensation was payable not as retrenchment compensation payable under Section 25F but compensation as if retrenchment in view of the provisions of Section 25FF. He submits that after the transfer of the Lift Irrigation Schemes to the Karkhana, the workmen had become surplus and their services had been terminated in view of the transfer of the undertaking in accordance with Section 25FF. He then submits that assuming the Award of the Labour Court is erroneous, no reinstatement should be granted to the workmen as all of them must be employed elsewhere. Furthermore, he urges that the compensation awarded by the Labour Court may at best be enhanced rather than directing the Respondents to reinstate them.

6. It would be useful to refer to the provisions of Section 25N of the Act. Under this Section, no workman employed in any industrial establishment to which

Chapter VB applies and who has been in continuous service for not less than one year, can be retrenched without being given three months' notice in writing indicating the reasons for retrenchment and without prior permission of the appropriate Government. An "industrial establishment" has been defined in Section 25L(a) to mean a factory as defined in clause (m) of section 2 of the Factories Act, 1948, a mine as defined in clause (j) of sub-section (l) of section 2 of the Mines Act, 1952 or a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951. A "factory" as defined under the Factories Act, 1948, means any premises including the precincts thereof, where ten or more workers are working and in which the manufacturing process is being carried out with the aid of power. "Manufacturing process" has been defined in section 2(k) of the Factories Act, 1948 as under :-

> "(k) "manufacturing process" means any process for -
>
> (i) making altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
>
> (ii) pumping oil, water, sewage or any other substance; or
>
> (iii) generating, transforming, or transmitting power; or
>
> (iv) composing types for printing, printing

by letter press, lithography, photogravure or other similar process or book binding; or

(v) preserving or storing any article in cold storage; "

Therefore, under this Section, a process for pumping water is a manufacturing process and precincts of premises within which such a process or pumping water is carried out would be a factory. Admittedly, these workmen were working on Lift Irrigation Schemes which are used for pumping water. Therefore, the submission of Mr.Dharap that the establishment is a factory must be accepted. Once this submission is accepted, automatically the provisions of Chapter VB will be applicable as admittedly more than 100 workmen were employed in the industrial establishment. Therefore, provisions of Section 25N were required to be complied with by the Respondents. Admittedly, these provisions have been breached by the Respondents. Under Section 25N(7) of the Act, where no application for permission under sub-section (1) has been made to the appropriate Government for retrenchment, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman is entitled to all benefits as if no notice had been given to him. Therefore, the submission of Mr.Dharap that there having been no permission sought or granted for retrenchment of these 163 workmen, the termination

is bad in the eyes of law must be accepted. The Labour Court has held that there is a breach of Section 25F of the Act. this finding of the Labour Court has not been challenged by the Respondents. The conclusion that one can draw is that there has been a breach of Section 25F and 25N while terminating the services of the workmen.

7. The submission of Mr.Patil that the termination was effected on account of the transfer of the undertaking from the Corporation to the Karkhana cannot be accepted for more than one reason. When the Petitioners including the Union representing them preferred Writ Petition No.2376 of 1985 before this Court contending that they were workmen of the Corporation and challenged the decision taken to transfer the 25 Lift Irrigation Schemes to the Karkhana from the Corporation, the affidavit filed on behalf of the Respondent No.2 categorically states that the workmen concerned cannot be considered as employees of the Corporation. The affiant has stated that the Petitioners in that Writ Petition had wrongly contended that the workmen were of the Corporation and not the employees of the Department. The affiant has further stated unequivocally that the correct position was that the workmen had all been appointed by the Irrigation Department and they were employees of the Irrigation

Department and that their services had been terminated by the Irrigation Department. Therefore, in my view, the submission made by Mr.Patil that it was on account of the transfer of the Lift Irrigation Schemes from the Corporation to the Karkhana that the services had been terminated cannot be countenanced.

8. The Respondents cannot approbate and reprobate. They cannot now be permitted to consider the workmen as employees of the Corporation and not of the Irrigation Department. That being the position, the question of Section 25FF coming into play does not arise.

9. When faced with the fact that the Respondents had not challenged the finding of the Labour Court that Section 25F had been breached, Mr.Patil for the Respondents attempted to get over this hurdle by pressing into service the provisions of Order 41 Rule 22 of the Civil Procedure Code and judgment in the case of *Anandrao Ganpatrao Sable* vs. *Madhavrao Ramrao Kanase and another*, **1989 (1) Bom.C.R. 256**. It has been held in this judgment that a successful party is not precluded from supporting a decree by showing that the adverse finding against it has been wrongly recorded by the Court below, without filing cross objections. The submission of Mr.Patil cannot be accepted. The provisions of the Civil Procedure Code are not

applicable to Writ Petitions. The finding on the issue of Section 25F having been breached is a finding of fact which cannot be interfered with at this belated stage. There is no dispute that the payment of retrenchment compensation and wages in lieu of notice was made only after cessation of employment. Therefore the Labour Court has correctly held that there was a breach of Section 25F. The submission that the termination was effected on account of transfer of the undertaking by complying with Section 25FF and not by way of retrenchment under Section 25F cannot be raised at this stage. The issue as to whether the termination of service attracted the provisions of Section 25F or Section 25FF is a mixed question of law and fact. Such a contention cannot be raised at this stage without filing cross objections. The reliance placed by Mr.Dharap in the case of *Bombay Metropolitan Transport Corporation Ltd.* vs. *Harischandra Narayan Sutar and others* in **Writ Petition No.5070 of 1984 dated 11th January 1985** of the Division Bench of this Court, is apt. The Respondents cannot be permitted to raise this issue for the first time in this Court in reply to the Writ Petition. The judgments in the case of *Suresh Baburao Bhandare* vs. *Administrator, Saswad Mali Sahakari Sakhar Karkhana Ltd., Malinagar and another*, **1992 I CLR 309** and Shri Govinddas Walchand Shah vs. The Administrator, Saswad Mali Sahakari Sakhar Karkhana Ltd.

and another, 2001 (1) Bom.C.R. 415 relied on by Mr.Patil where the provisions of Section 25FF have been considered are not relevant for the facts involved in the present Petition. Moreover when the Respondents in the earlier Writ Petition had stated on oath that the workmen were not the employees of the Corporation, their services could not have been terminated because of the transfer of the Lift Irrigation Schemes to the Karkhana.

10. Mr.Patil has urged strenuously that there is no work available now with the Respondents and, therefore, no reinstatement should be granted. Mr.Patil urges that the only relief which should be granted under such circumstances is that of payment of compensation. Reliance is placed on the case of *O.P.Bhandari* vs. *Indian Tourism Development Corporation Ltd. and others*, **AIR 1987 SC 111** and *Haryana Tourism Corporation Ltd.* vs. *Fakir Chand and others*, **(2003) 8 SCC 248**. In O.P.Bhandari's case (supra), the Supreme Court considered a situation where the workers had threatened to strike work on account of the conduct of the employee who's services were terminated and the relationship between the employer and employee was strained. It is in the light of these facts that the Apex Court directed payment of compensation. In *Haryana Tourism* (supra), the Apex Court has granted compensation of Rs.70,000/- in lieu of reinstatement since the workmen had been

recruited as daily wage earners without following the accepted mode of recruitment. After considering the nature of work which they performed and other relevant factors, the Apex Court quantified the compensation. In my view, neither of these judgments, which have been decided on facts obtaining in those cases, are applicable to the facts before me. There is no doubt that there has been an illegal termination of service in the present case.

11. The Award dated 21st May 1992 passed by the Labour Court, Sangli is set aside. The workmen concerned in the References are entitled to reinstatement with continuity of service and 25% backwages. All workmen who are interested in employment must report for duty within two months from the date of this order. The respondents will give them employment by reinstating them with continuity of service within a month thereafter. Backwages shall be paid to the workmen, computed at 25% within three months of their reinstatement in service.

12. There are some workmen who have been absorbed in other departments of the State Government or have secured employment elsewhere. These workmen shall be paid 25% backwages till the date they secured employment within six months from today.

13. A few workmen have already reached the age of superannuation during the pendency of these proceedings. They shall be paid the backwages computed at 25% till the date they attained the age of superannuation within three months from today.

14. I am informed that some workmen have expired during the pendency of the proceedings in Court. The respondents shall pay to the heirs of these workmen 25% of backwages upto the date of death of these workmen within three months from today.

15. Writ Petition disposed of accordingly. Rule made partly absolute. No order as to costs.

16. In view of the disposal of the Writ Petition, nothing survives in Civil Application No.7113 of 1999 and Civil Application No.4244 of 1999 and the same are disposed of as infructuous.

17. Mr.Patil for Respondent No.2 seeks a stay of this order. In the circumstances, this order is stayed upto 30.10.204 in respect of reinstatement only.

18. Office to provide authenticated copy of this judgment.